

Senate Bill 191

By: Senators Tolleson of the 20th, Bulloch of the 11th, Johnson of the 1st and Pearson of the 51st

**AS PASSED**

**AN ACT**

To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, so as to change certain provisions relating to the Environmental Protection Division, the Environmental Advisory Council, duties of the council, its members, and the director of the division, procedure for aggrieved persons, and inspections; to change certain provisions relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting water withdrawals; to change certain provisions relating to permits for groundwater withdrawals for farm uses, notice of transfer or modification in use or capacity, nonuse, suspension or modification, priority uses, reporting and measuring water withdrawals, and no effect on existing common or statutory law; to provide an effective date; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, is amended by striking paragraph (1) of subsection (c) of Code Section 12-2-2, relating to the Environmental Protection Division, the Environmental Advisory Council, duties of the council, its members, and the director of the division, procedure for aggrieved persons, and inspections, and inserting in lieu thereof the following:

"(c)(1)(A) The director shall issue all orders and shall grant, deny, revoke, or amend all permits or variances provided for in the laws to be enforced by the division. The director shall also issue any certification which is required by any law of this state or the United States to be issued by the director, the Department of Natural Resources, or the State of Georgia relating to pollution control facilities or matters. The director shall notify all permit or variance applicants within 30 days of receipt of the application as to the completeness of the application and, if the director finds the same to be incomplete, what specific additional materials the applicant need submit to make the

application complete. The director shall grant or deny any permit or variance within 90 days after receipt of all required application materials by the division, provided that the director may for any application order not more than one extension of time of not more than 60 days within which to grant or deny the permit or variance.

(B)(i) The director may identify professionals qualified to review certain permit applications in accordance with rules and regulations adopted by the board of the Department of Natural Resources.

(ii) A permit applicant may retain a qualified professional to review an application prior to submittal to the division. If the qualified professional certifies an application as complete, the division shall act expeditiously on the application.

(iii) A qualified professional certifying an application shall be independent of any professional preparing the application.

(iv) The applicant shall directly pay the fees of the qualified professional.

(v) The director may remove the qualified status of a professional if the professional provides a certification for an inaccurate application.

(C) When any application for a permit or variance is pending before the director and the director has not either granted or denied the permit or variance within the time specified for the director to do so, the director shall immediately refund any and all fees which were required to be submitted by the applicant as a condition of the permit application, except for fees required to be levied pursuant to federal law. Such fee refund shall not otherwise affect the application process, and the application shall be granted, denied, or otherwise handled as it otherwise would have been, except that the fee requirement shall be waived."

## **SECTION 2.**

Said title is further amended by striking paragraph (3) of subsection (a) of Code Section 12-5-31, relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting water withdrawals, and inserting in lieu thereof the following:

"(3) Notwithstanding any other provision of this Code section to the contrary, a permit for the withdrawal or diversion of surface waters for farm uses shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of surface waters occurred prior to July 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted prior

to July 1, 1991, an application for a permit to be issued based upon farm uses of surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or diversion of surface waters at a rate of withdrawal or diversion equal to the greater of the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal or diversion capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal or diversion of surface waters for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to subsections (e), (f), and (g) of this Code section, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such surface waters. Any permit issued pursuant to this paragraph shall be conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; a description of the general type of irrigation system used; the source of withdrawal water such as river, stream, or impoundment; and pump information, including rated capacity, pump location, and power information. Applications under this paragraph submitted on or after the effective date of this paragraph for farm use within the Flint River basin shall be assessed a nonrefundable application fee in the amount of \$250.00 per application. Permits applied for under this paragraph on or after the effective date thereof for farm use in the Flint River basin shall have a term of 25 years and shall be renewed at the original permitted capacity unless an evaluation of the water supply by the division indicates that renewal at the original capacity would have unreasonable adverse effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource. All permits issued under this paragraph may be transferred or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that the division shall receive written notice of any such transfer or assignment. Any modification in the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with this Code section. Nothing in this paragraph shall be construed as a repeal or modification of Code Section 12-5-46."

**SECTION 3.**

Said title is further amended by in subsection (k) of said Code Section 12-5-31 by adding a new paragraph to read as follows:

"(6.1) The director may permanently revoke any permit under this Code section for farm use within the Flint River Basin applied for on or after the effective date of this paragraph if initial use for the purpose indicated on the permit application, as measured by a flow meter approved by the State Soil and Water Conservation Commission, has not commenced within two years of the date of issuance of the permit unless the permittee can reasonably demonstrate that his or her nonuse was due to financial hardship or circumstances beyond his or her control."

**SECTION 4.**

Said title is further amended by striking subsections (a) and (b) of Code Section 12-5-105, relating to permits for groundwater withdrawals for farm uses, notice of transfer or modification in use or capacity, nonuse, suspension or modification, priority uses, reporting and measuring water withdrawals, and no effect on existing common or statutory law, and inserting in lieu thereof the following:

"(a) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, a permit to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined by paragraph (5.1) of Code Section 12-5-92, shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of ground water occurred prior to July 1, 1988, and when such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of ground water occurring prior to July 1, 1988, shall be granted for the withdrawal of ground water at a rate of withdrawal equal to the greater of the operating capacity in place for withdrawal on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal of ground water for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to Code Sections 12-5-96 and 12-5-97, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such ground water. Applications under this Code section submitted on or after the effective date of this

subsection for farm use within the Flint River basin shall be assessed a nonrefundable application fee in the amount of \$250.00 per application. Any permit issued pursuant to this Code section shall be further conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; the name and address of the permittee; a description of the general type of irrigation system used; well construction; and pump information, including rated capacity, pump setting depth, and power information.

(b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined in paragraph (5.1) of Code Section 12-5-92, whether for new withdrawals or under subsection (a) of this Code section, shall be governed as follows:

(1) A permit issued, modified, or amended after July 1, 2003, for farm uses shall have annual reporting requirements. Permits applied for under this Code section on or after the effective date of this subsection for farm use within the Flint River basin shall have a term of 25 years and shall be renewed at the original permitted capacity unless an evaluation of the water supply by the division indicates that renewal at the original capacity would have unreasonable adverse effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource. All permits issued under this Code section may be transferred or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that the division shall receive written notice of any such transfer or assignment, and any modification in the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with the requirements of this part;

(2) Permits for farm use, after initial use has commenced, shall not be revoked, in whole or in part, for nonuse; except that the director may permanently revoke any permit under this Code section for farm use within the Flint River Basin applied for on or after the effective date of this paragraph if initial use for the purpose indicated on the permit application, as measured by a flow meter approved by the State Soil and Water Conservation Commission, has not commenced within two years of the date of issuance of the permit unless the permittee can reasonably demonstrate that his or her nonuse was due to financial hardship or circumstances beyond his or her control;

- (3) The director may suspend or modify a permit for farm use if he or she should determine through inspection, investigations, or otherwise that the quantity of water allowed would prevent other applicants from reasonable use of ground water beneath their property for farm use;
- (4) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use; and
- (5) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section."

#### **SECTION 5.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### **SECTION 6.**

All laws and parts of laws in conflict with this Act are repealed.